

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 87642-001

v

Blue Cross and Blue Shield of Michigan
Respondent

/

Issued and entered
This 21st day of April 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On February 28, 2008, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on March 6, 2007.

It was determined that XXXXX did not receive Blue Cross and Blue Shield of Michigan's (BCBSM) final adverse determination (dated November 15, 2007) until January 9, 2008, and therefore his request was timely. See MCL 550.1911.

The Petitioner is enrolled for health coverage with BCBSM through the Michigan Education Special Services Association (MESSA). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on March 17, 2008.

The issue in this external review can be decided by a contractual analysis. The contract

here is the MESSA Choices II Group Insurance for School Employees certificate of coverage (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner received residential psychotherapy provided by XXXXX, MS, at XXXXX, from March 29 until May 1, 2007. The amount charged for this care was \$5,100.00.

According to its website, XXXXX is a residential adolescent mental health provider that “offers a short to moderate length, clinically integrated, outdoor leadership program that combines intensive therapeutic work with wilderness training and adventure. XXXXX is both a cognitive-based therapeutic intervention and an outdoor leadership development program.” XXXXX is not a panel or participating provider with BCBSM, i.e., it has not signed an agreement with BCBSM to provide covered services.

The Petitioner appealed BCBSM’s decision to deny coverage for his care at XXXXX. BCBSM held a managerial-level conference on November 7, 2007, and issued a final adverse determination dated November 15, 2007.

III ISSUE

Is BCBSM required to cover the Petitioner’s treatment at XXXXX from March 29, 2007, until May 1, 2007?

IV ANALYSIS

Petitioner’s Argument

While the Petitioner was enrolled at XXXXX, XXXXX was the therapist working with him. XXXXX was supervised by XXXXX.

The Petitioner says that his therapy was medically necessary because of his diagnosis of “substance abuse, early partial remission.” He believes that under the terms of the certificate, this

treatment is a benefit and BCBSM is required to pay at least 80% of its cost.

BCBSM's Argument

In Section 6 of the certificate (pages 34), "Mental health and Substance Abuse Services," it explains that:

All services must be medically necessary and provided by an eligible provider. [Emphasis added]

Eligible Providers

The network contains the following mental health and substance abuse treatment provider types who have agreed to provide services to MESSA members enrolled in MESSA Choices II.

- Licensed physicians
- Psychiatrists
- Full licensed psychologists
- Certified clinical social workers*
- Certified nurse specialists in mental health*
- Hospital –based mental health facilities
- Outpatient psychiatric care facilities
- Hospital-based and freestanding residential substance abuse facilities
- Outpatient substance abuse treatment programs

**Services from these providers are covered only if performed in a panel outpatient psychiatric care facility or under the direct supervision of an MD or DO.*

BCBSM says that the Petitioner's providers do not meet any of the certificate's eligibility criteria. BCBSM contacted XXXXX and determined the MS in XXXXX's title stands for Masters in Science. BCBSM also found that XXXXX's supervisor, XXXXX, was not an MD or DO. BCBSM also says that XXXXX is not a hospital since its literature indicates that its residents have hospital care available at a regional facility with a 24-hour emergency room located 12 miles away. Finally, BCBSM says that XXXXX is not a residential substance abuse treatment program since it does not operate 24 hours a day, seven days a week.

BCBSM believes that it acted properly when it denied coverage for the Petitioner's care at XXXXX since the therapist who performed the services is not an eligible provider as defined in the certificate, and XXXXX is licensed in XXXXX as an outdoor therapeutic camp, not as a hospital or a residential substance abuse treatment facility.

Based on this information, BCBSM concluded the Petitioner's care at XXXXX was not performed by eligible providers under the terms of his certificate and was therefore not covered.

Commissioner's Review

The Commissioner is sympathetic to the Petitioner's situation. He went to a treatment facility that he felt could best meet his needs. However, the certificate in this case requires that mental health and substance abuse treatment be provided by an eligible provider.

There was no information was provided that the Petitioner's therapist met the criteria to be an eligible provider. Even if Ms. XXXXX were a clinical social worker or nurse specialist in mental health, she was not supervised by an MD or DO physician and therefore does not meet eligibility requirements set forth in the certificate.

If the Petitioner had received care from a hospital-based or an outpatient substance abuse treatment program, the care might have been eligible for reimbursement by BCBSM. However, XXXXX is licensed by XXXXX as an outdoor therapeutic camp and does not meet the definition of a hospital-based or residential substance abuse facility.

The Commissioner concludes that the care the Petitioner received from March 29 until May 1, 2007, at XXXXX was not provided by an eligible provider as defined in the certificate and is therefore not a covered benefit.

V ORDER

BCBSM's final adverse determination of November 15, 2007, is upheld. BCBSM is not required to cover the Petitioner's care at XXXXX.

This is a final decision of an administrative agency. Under MCL 550.1915, any person

aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.